THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14948 of 2007

16.7.2007

Between:

Donavalli Tathayya, S/o.Venkayya

… Petitioner

AND

The District Collector, Krishna District, Machilipatnam

And others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14948 of 2007

ORDER:

The petitioner purchased house site admeasuring Acs.0.24 in survey No.294/7 situated at Veleru village of Bapulapadu Mandal in Krishna District, under registered sale deed. He also purchased another extent of Acs.0.09 to private pathway of the site. He alleges that his neighbour, Avirneni Sudha Rani, encroached upon his land and disputed the boundary of the house site. Therefore, the petitioner paid Rs.250/- by way of challan on 11.12.2006 and submitted a representation to third respondent to survey the house site, in vain. Therefore, the petitioner got issued a legal notice dated 13.1.2007 and as there is no response, he filed the instant writ petition.

Learned Counsel for the petitioner relies on paragraph 20 of BSO 34-A in support of the contention that when a duty is cast on the respondents 2 and 3, they are bound to conduct survey and demarcate the house site. This is refuted by learned Assistant Government Pleader for Revenue (General-A).

Paragraph 20 of BSO 34-A reads as under.

> **20. Applications from private parties to point out Boundaries of Fields:-** (a) Applications from Private parties to point out the boundaries of their fields in accordance with the survey records may be received by the Taluk Tahsildar. The Party making the application should deposit with it a sum of Rs.3/- for each 'F' line of the field to be pointed out by the Govt. Officers. On receipt of the application with the deposit, the Tahsildar should forward it to the Surveryor/Firka Deputy Surveyor who should, during his visit to the Village, comply with the request made in the application. If, however, a party applies for pointing out the boundaries of fields by any higher grade of officer, other than the Firka Deputy Surveyor, it may be undertaken, provided the party deposits the prescribed fee. The fee received on this account should be credited to "M.H.029. Land Revenue-E, other receipts. 1, Receipts in connection with survey and settlement operations". A separate register of applications thus received should be maintained in the taluk office in the form given in Appendix-XII. The Surveyor/Firka Deputy Surveyor should, after pointing out the

required boundary to the ryot, obtain his signature to that effect in the application and should himself certify thereon that the boundary was pointed out by him in accordance with the measurements noted in the survey records.

After all action has been taken the applications should be kept filed in the order of their numbers and may be destroyed after a year.

B.P.130, Press, dated 17.12.40.

(b) Application from private parties or orders of the revenue officer acting under the splitting up of Joint Pattas Act and rules framed thereunder for sub-division of registered sub-divisions or Survery Fields:-

(i) In respect of sub-divisions arising out of item (d) of sub-para 2 and sub-para 3 of para 10 above no sub-division work should be done until the fee prescribed, i.e., Rs.5/- for each sub-division has been remitted by the party into the treasury through challan to the credit of "M.H.029-Land Revenue-E other Receipts-1. Receipts in connection with surveyed and settlement operations". A register of sub-division fee should be maintained in the form given in Appendix-XIX by the clerk maintaining the register No.8-A in the taluk office. This register should be treated as subsidiary chitta like the Land Revenue chitta. It will be maintained in two sections, one section for the rural tracts and the other for each town. At the end of the Official year, the amount collected should be apportioned and adjusted wherever necessary between the Government and the Municipality in the ratio of 1 : 2.

(ii) The application will be assigned a current number and forwarded to the Firka Deputy Surveyor or the Town Surveyor as the case may be for report regarding enjoyment and resubmission with a sketch and statement as per instructions in Appendices III & XIII. On receipt of the report of the Firka Deputy Surveyor or the Town Surveyor, the sub-division record and the statement will be tentatively sanctioned by the Tahsildar under a new current opened in Taluk Register No.8-A and sent for check-measurement as per the instructions in B.S.O.34-A 13(b).

The copies of the orders issued by the Revenue Office under splitting up of Joint Pattas Act and rules will be assicurrent numbers in the special register of sub-divisions opened for the purposes of the scheme, and forwarded to the Firka Deputy Surveyor, after collection of the sub-division fees, for attending to the sub-division work and submission or sub-division records. Further action in respect of these sub-divisions will be taken as per rules framed under splitting up of Joint Pattas Act.

(iii) **Refunds**:- If the Tahsildar refuses to permit a sub-division, after the fee has been paid, and the sub-division is not measured by the Surveyor, the applicant is entitled to a refund of the sub-division fee. When a fee is refunded an entry should be made to that effect in the remarks column of the sub-division fee register with particulars of the voucher number.

The notice of this Court is also invited to paragraph 21, which is to the effect that the Rules contained in Appendix XIII would govern the

service in Municipal areas and the Rules contained in Appendix XIII-A would govern the service in Panchayat areas. Petitioner admittedly sought survey of house site in panchayat area and therefore BSO 34-A (20) has no application. Secondly, learned Counsel for the petitioner has not shown any Rule showing that there is any compelling time schedule to be adhered to by the respondents 2 and 3. In such a case, as held by this Court in **Mir Fazle Ali Nasiri v State of A.P.**[1], no direction can be granted to respondents to complete the survey within a stipulated time. Petitioner has to pursue the remedy with the respondents 2 and 3.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

July 16, 2007
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[1] 2007(2) ALD 3